IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 3313 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NATIONAL INSURANCE CO.LTD.

Versus

FARJANABAI YASIMBHAI SHAIKH

Appearance:

MR SUNIL B PARIKH for Petitioner

RULE NOT RECD BACK for Respondent No. 1

MR HM LATHIA for Respondent No. 2

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 30/04/2001

ORAL JUDGEMENT

Heard Mr. S.B.Parikh learned advocate for the appellant. The respondent no.1 has failed to appear despite due service. However, respondent no.2 who is the owner of the offending vehicle has appeared. By consent of the parties, appeal is taken up for final hearing.

2. The appellant has filed the present appeal under Section 173 of the Motor Vehicle Act,1988 (for short "the Act") as insurer of the offending vehicle.

3. That the M.A.C.Tribunal (Aux.), Gondal has awarded an amount of Rs.25,000/- as interim compensation together with interest @ 12% per annum from the date of application til realization vide impugned order passed below Exh.5 in the proceedings of M.A.C.Petition No. 1244 of 1999.

4. The above stated order is passed under Section 140 of the Act and as such, it is an interim award subject to adjustment against the award which may be passed in pending claim petition being M.A.C.Petition No. 1244 of 1999 before the M.A.C.Tribunal (Aux.), Gondal and as such, it would not be just and proper to interfere with the impugned order and award at this stage. However, an undertaking shall be obtained from the opponent no.1 the original claimant to the extent that opponent no.1 shall obtain decision on merits in the pending M.A.C.Petition No. 1244 of 1999. Hence, following operative orders are passed :

(i) The respondent no.1 - Farjanabai Yasimbhai Shaikh (original claimant) shall file an undertaking before the M.A.C.Tribunal (Aux.), Gondal within a period of four weeks from the date of service of this order to the effect that claim petition being M.A.C.Petition No. 1244 of 1999 shall not abandoned nor shall withdraw or shall permitted to be dismissed for default or for any other cause and shall obtain the decision on merits.

(ii) That on filing of such undertaking by claimant, the Tribunal shall permit the claimant to withdraw the remaining amount of the impugned award after the implementation of earlier order dated 11.12.2000 passed in Civil Application No.11309 of 2000.

(iii) The Registry is directed to forward the FDR if the amount is invested in accordance with the order dated 11.12.2000 passed in Civil Application No.11309 of 2000 to M.A.C.Tribunal (Aux.), Gondal in the proceedings of M.A.C.Petition No.1244 of 1999.

If the amount has not been invested uptil now, the Registry shall get the amount invested and transmit the receipt to the

Tribunal.

5. On the basis of foregoing discussion and subject to above stated observation and direction, present appeal stands disposed of as rejected with no order as to costs.

(A.K.Trivedi,J.)
(vipul)